

CONTRACT #1
RFS # 327.12-004

**Department of Environment
& Conservation**

VENDOR:
**Megasys Hospitality
Systems, Inc.**



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

JAMES H. FYKE
COMMISSIONER

PHIL BREDESEN
GOVERNOR

August 1, 2005

RECEIVED

AUG 01 2005

FISCAL REVIEW

James W. White, Executive Director
Fiscal Review Committee
General Assembly of the State of Tennessee
320 Sixth Avenue North, 8th Floor
Nashville, Tennessee 37243

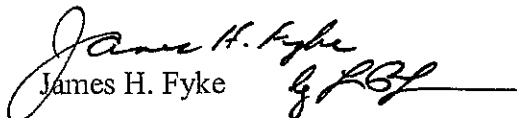
Dear Mr. White: .

On February 8, 2005, the Fiscal Review Committee approved a request for a non-competitive contract with Megasys Hospitality Systems, Inc., for the operation of the Tennessee State Parks central reservation system and software licensing, upgrades, maintenance, and support for the hospitality management information system (RFS 327.12-023). The proposed contract was for a term of August 1, 2005 through July 31, 2010 and a maximum liability of \$2,500,000. To date, negotiations with Megasys are still ongoing.

The Department of Environment and Conservation now requests approval for a non-competitive amendment to the existing contract with Megasys (RFS 327.12-004). This original contract was reviewed by the committee and approved in early 2004. The amended contract would have a term of January 1, 2004 through September 30, 2005 and a total maximum liability of \$450,000. This represents a two-month extension and an increase of \$37,700 and would provide continuity of service while allowing the department to continue to negotiate with Megasys in the state's best interest.

Thank you for your consideration of this request.

Sincerely,


James H. Fyke

REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #

327.12-004

STATE AGENCY NAME :

Department of Environment and Conservation

SERVICE CAPTION :

Central Reservation Services System and Technical Support for the Hospitality Management System

CONTRACT #

FA-04-15794-00

PROPOSED AMENDMENT #

1

CONTRACTOR :

Megasys Hospitality Systems, Inc.

CONTRACT START DATE :

1/1/04

CURRENT, LATEST POSSIBLE END DATE :
(including ALL options to extend)

7/31/05

CURRENT MAXIMUM LIABILITY :

\$412,300

LATEST POSSIBLE END DATE WITH PROPOSED AMENDMENT :
(including ALL options to extend)

9/30/05

TOTAL MAXIMUM COST WITH PROPOSED AMENDMENT :
(including ALL options to extend)

\$450,000

APPROVAL CRITERIA :
(select one)

use of Non-Competitive Negotiation is in the best interest of the state



only one uniquely qualified service provider able to provide the service

ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)

(1) description of the proposed additional service and amendment effects :

The proposed contractor will continue to operate the central reservation system. The proposed contractor will also provide software upgrades, maintenance, and support for the Tennessee State Parks hospitality management system at the facilities. In addition, the contractor will implement state-requested software modifications related to the change in the state's credit card interface. The amendment will continue the current level of service for two additional months.

(2) explanation of need for the proposed amendment :

The Hospitality Management System is currently implemented at six state parks. The system is used at these 6 parks to manage operations for 6 inns and conference centers, 5 golf courses, 6 restaurants, 7 gift shops, 6 snack bars and 2 marinas. Also, it includes a Central Accounting Module that allows Fiscal Services to access consolidated financial information for all of these facilities in real time.

Operations for the last fiscal year alone included the processing of approximately 82,000 reservations for inn and cabin accommodations. These reservations are entered either by park staff, by the guest as an online reservation, or by Megasys Hospitality Systems staff at the Central Reservations service center that is provided as an additional service via the current contract. Also during the last fiscal year, over 530,000 point-of-sale transactions for the golf courses, gift shops, restaurants, snack bars, and marinas have been processed. In fact, over 144,000 credit card transactions, amounting to nearly \$10 million in credit card sales, were processed for the reservations and point of sale transactions at these 6 parks during the last fiscal year alone.

Tennessee is one of a few, if not the only, state that has such an integrated system in place, connecting multiple state parks and their various operations, in a standardized and fully integrated format that supports both the activities at the park level as well as the needs of central office staff. Based on the volume of transactions and the magnitude of dollars involved, this type of integrated system continues to be a necessity for the state park system.

(3) name and address of the proposed contractor's principal owner(s) :

(not required if proposed contractor is a state education institution)

Patrick Curry	Ed Mascarín
4770 S. Harvard	4770 S. Harvard
Suite 300	Suite 300
Tulsa, OK 74135	Tulsa, OK 74135

(4) documentation of OIR endorsement of the Non-Competitive procurement request :

(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

(5) documentation of Department of Personnel endorsement of the Non-Competitive procurement request :

(required only if the subject service involves training for state employees)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

(6) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :

The system software and code are proprietary to the contractor and are not available from any other source. Consequently, the agency has not pursued competitive alternatives.

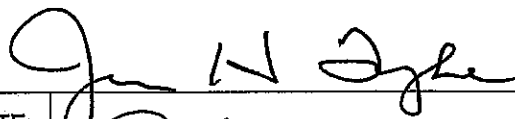
(7) justification of why the F&A Commissioner should approve a Non-Competitive Amendment :

The agency previously requested and received approval for a non-competitive contract with the incumbent provider pursuant to RFS 327.12-023. Negotiations with the service provider have thus far not been successful. Approval of a noncompetitive amendment would provide continuity of service while allowing the department to continue negotiations in the state's best interest.

AGENCY HEAD REQUEST SIGNATURE:

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)

SIGNATURE DATE:


July 29, 2005



STATE OF TENNESSEE

FAX TRANSMITTAL

TO:	Bill Ezell, Chief Executive Officer Office for Information Resources	FAX # 741-4589
FROM:	Ray Register, Director of Contract Administration	FAX # 532-0197
DATE:	December 9, 2004	
RFS#	327.12-023	
RE:	OIR Procurement Endorsement Documentation for — HOSPITALITY MANAGMENT SYSTEM	

NUMBER OF FAX PAGES (INCLUDING COVER):

The proposed, service procurement documents referenced above are hereby forwarded to the Office for Information Resources (OIR) for review. The subject scope of services appears to include information systems services or information technology support activities.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter to determine whether OIR is supportive. Please indicate OIR endorsement of the procurement described by signature below and return this communication at your earliest convenience (note the return FAX number above).

If you have any questions or concerns about this matter, please call Ray Register at 532-0216.

Thank you for your help.

Attachment

OIR ENDORSES THE SUBJECT PROCUREMENT REQUEST


Office for Information Resources


Date

C O N T R A C T S U M M A R Y S H E E T

RFS Number:	327.12-004	Contract Number:	FA-04-15794-01
State Agency:	Department of Environment and Conservation	Division:	Tennessee State Parks
Contractor:		Contractor Identification Number:	
Megasys Hospitality Systems, Inc.		<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	73-1349986-00


Service Description

Central Reservation System Services and maintenance and support for the Hospitality Management System

Contract Begin Date	Contract End Date
1/1/04	9/30/05

Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
327.12	00301	083	11	<input type="checkbox"/> on STARS		

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)
2004	412,300.00				412,300.00
2006	37,700.00				37,700.00
Total:	450,000.00				450,000.00

CFDA #		Check the box ONLY if the answer is YES:	
State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	<input type="checkbox"/>
Name:	Tom Eck	Is the Contractor a VENDOR? (per OMB A-133)	<input checked="" type="checkbox"/>
Address:	18 th Floor, L&C Tower	Is the Fiscal Year Funding STRICTLY LIMITED?	<input type="checkbox"/>
Phone:	532-0292	Is the Contractor on STARS?	<input checked="" type="checkbox"/>
Procuring Agency Budget Officer Approval Signature		Is the Contractor's FORM W-9 ATTACHED?	<input type="checkbox"/>
		Is the Contractor's Form W-9 Filed with Accounts?	<input checked="" type="checkbox"/>

COMPLETE FOR ALL AMENDMENTS (only)			Funding Certification
	Base Contract & Prior Amendments	This Amendment ONLY	Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.
END DATE →	7/31/05	9/30/05	
FY: 2004	412,300.00		
FY: 2006		37,700.00	
FY:			
FY:			
FY:			
Total:	412,300.00	37,700.00	

**AMENDMENT 1
TO CONTRACT FA-04-15794-00**

This Contract, by and between the State of Tennessee, Department of Environment and Conservation, hereinafter referred to as the State, and Megasys Hospitality Systems, Inc., hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section B.1. in its entirety and insert the following in its place:

B.1. Contract Term. This Contract shall be effective for the period commencing on January 1, 2004 and ending on September 30, 2005. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. Delete Section A.3 in its entirety and insert the following in its place:

A.3. Contractor shall notify State of all system upgrades and shall furnish State with all upgrades that become available. Upgrades shall be provided to State free of charge. In the event of upgrades, Contractor shall provide support for the two (2) previous full major software releases. The parties acknowledge that two system upgrades, which include two upgrades of the ProvideX platform, are due to the State, but have been delayed by implementation of the State's current credit card interface provider. Contractor shall deliver/install all upgrades prior to contract termination. Should the upgrades delivery/installation not be complete by the contract termination date stated above, this provision shall not be extinguished at the termination date, but shall continue until successful completion.

3. Delete Section C.1 in its entirety and insert the following in its place:

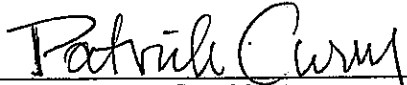
C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed four hundred fifty thousand dollars (\$450,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

MEGASYS HOSPITALITY SYSTEMS, INC.:



Patrick Curry, President

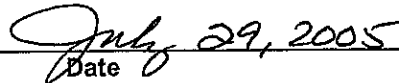


Date

DEPARTMENT OF ENVIRONMENT AND CONSERVATION:



James H. Fyke, Commissioner



Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

CONTRACT SUMMARY SHEET

Number:	327.12-004	Contract Number:	FA-04-15794-00
State Agency:	Environment and Conservation	Division:	Tennessee State Parks
Contractor		Contractor Identification Number	
Megasys Hospitality Systems, Inc.		<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	73-1349986-00

Service Description

Continuing central reservation system services, and technical support services for the hospitality management system

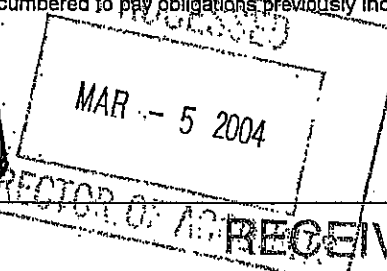
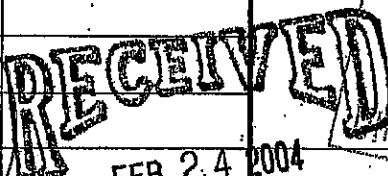
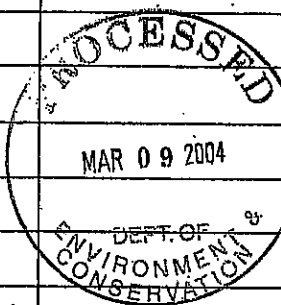
Contract Begin Date	Contract End Date
01/01/0004	07/31/005

Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
327.12	00301	083	11	<input type="checkbox"/> on STARS		

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (Including ALL amendments)
04	412,300.00				412,300.00
Total:	412,300.00				412,300.00

FDA #	Check the box ONLY if the answer is YES	
State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)
Name:	Fiscal Services	Is the Contractor a VENDOR? (per OMB A-133)
Address:	18 th Floor L&C Tower	Is the Fiscal Year Funding STRICTLY LIMITED?
Phone:	615-532-0315	Is the Contractor on STARS?
Procuring Agency Budget Officer Approval Signature		Is the Contractor's FORM W-9 ATTACHED?
Thommas Leach/PN 12-17-03		Is the Contractors Form W-9 Filed with Accounts?

COMPLETE FOR ALL AMENDMENTS (only)			Funding Certification
END DATE →	Base Contract & Prior Amendments	This Amendment ONLY	Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.
Y:			
Y:			
Y:			
Y:			
Y:			
Total:			



MANAGEMENT SERVICES

JAN 13 2004

Office of Contracts Review

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
AND
MEGASYS HOSPITALITY SYSTEMS, INC.**

This Contract, by and between the State of Tennessee, Department of Environment and Conservation, hereinafter referred to as the "State" and Megasys Hospitality Systems, Inc., hereinafter referred to as the "Contractor," is for the provision of continuing central reservation system services, and technical support services for the hospitality management system, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for profit corporation. The Contractor's address is:

4770 South Harvard, Suite 300
Tulsa, OK 74135

The Contractor's place of incorporation or organization is Oklahoma.

A. SCOPE OF SERVICES:

The Tennessee State Parks System resort park operations currently utilize a hospitality management system that was installed by Contractor. The system utilizes software created and owned by Contractor. The hospitality management system operation requires technical support and maintenance that the State cannot provide. The hospitality management system will benefit from software upgrades that become available. In addition, Contractor operates a central reservation system that includes reservations made by telephone and by Internet. The reservations system utilizes software created and owned by Contractor. State has determined that it is in the best interests of the State for the hospitality management system and the central reservation system to continue in operation. Therefore, the Contractor shall provide the following services:

- A.1. The Central Reservation System service for Tennessee State Parks, including reservations made through the web-based Internet application, shall continue to be provided during the current hours of operation. Contractor shall insure that State continues to have the ability to update the Central Reservation System from any of the parks. This includes any real time interface(s) needed to update each park Property Management System.
- A.2. The technical support and maintenance Help Desk services for the Tennessee State Parks hospitality management system shall continue to be provided 24 hours per day, 7 days per week.

- A.3. Contractor shall notify State of all system upgrades and shall furnish State with all upgrades that become available. Upgrades shall be provided to the State free of charge. In the event of upgrades, Contractor shall provide support for the two (2) previous full major software releases.
- A.4. Contractor shall provide any and all software licensing required to continue the hospitality management system and central reservation system functions.
- A.5. Contractor shall implement software/system modifications requested by State. Where possible, modifications will be made at the Contractor's locations. Where necessary, modifications will be made by Contractor's personnel at state resort park locations.
- A.6. Contractor warrants that it shall provide whatever modification and/or correction is required during the term of the contract to insure that the system remains integrated.
- A.7. Following each month of operation, the Contractor shall provide the State contact person with a printed report that displays the activities of the central reservation system.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on January 1, 2004, and ending on July 31, 2005. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Hundred Twelve Thousand, Three Hundred Dollars (\$412,300.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>SERVICE UNIT/MILESTONE</u>	<u>AMOUNT</u>
Software licensing, upgrades, maintenance and support	\$13,500.00 per month
Central reservation system operation	\$8,200.00 per month
Successful implementation of State requested and approved software and system modifications	\$120.00 per hour
Software and system modifications performed by contractor personnel at resort park sites	\$1260.00 per day

A "day" shall be defined as a minimum of eight (8) hours of service. The Contractor shall bill only for portions of a day if the Contractor provided fewer than eight hours of service in a standard twenty-four hour day. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.6. Price Reductions. The Contractor's invoice shall be subject to adjustment for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The Contract ^{may} be terminated by either party by giving written notice to the other, at least ~~ten~~ ^{ninety} (90) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission in order to seek redress.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:
Andy Lyon

Tennessee State Parks
7th floor, L&C Tower
401 Church Street
Nashville, TN 37243
615 532-0001

The Contractor:
Bob Read
Megasys, Inc.
Suite 300, 4770 South Harvard
Tulsa, OK 74135
918 743-0100
918 743-9876

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor

shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. State Licensure of Software. As part of this Contract, the State receives licensed use of hospitality management software products developed by Contractor, including central reservations software. These software products have previously been installed and are in use at Tennessee State Parks resort park operations, or at Contractor's business location. The State receives a non-exclusive licensed use of the software products, modifications, upgrades and associated documentation for the term of this Contract. In the event that it is determined that the Contractor's software will continue to be used by State after the expiration date of this Contract, the parties shall enter into negotiations beginning six months prior to the contract expiration date, with the objective of forming a new contract agreement. This provision shall in no way supersede any requirements of Tennessee law relating to State procurement and contracts.
- E.5. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.6. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.


The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.
- E.8. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

IN WITNESS WHEREOF:

MEGASYS HOSPITALITY SYSTEMS, INC.:


 Robert Read, PRESIDENT
 Title

12/01/03
 Date

DEPARTMENT OF ENVIRONMENT AND CONSERVATION:

B. Child
Betsy L. Child, Commissioner
Date *1/6/04*

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

MD Goetz Jr RB
M. D. Goetz, Jr., Commissioner
Date FEB 23 2004

COMPTROLLER OF THE TREASURY:

John G. Morgan
John G. Morgan, Comptroller of the Treasury
Date *2/25/04*



FISCAL REVIEW COMMITTEE
STATE OF TENNESSEE
8th FLOOR, RACHEL JACKSON BUILDING
NASHVILLE, TN 37243-0057
(615) 741-2564

Representative Charles Curtiss
Chairman

MEMORANDUM

TO: The Honorable Dave Goetz, Commissioner
Department of Finance and Administration

FROM: Charles Curtiss, Chairman

DATE: February 8, 2005

SUBJECT: Contract Comments (Contract Services Subcommittee
Meeting 2/7/05)

RFS# 327.12-023

Department: Environment and Conservation

Contractor: Megasys Hospitality Systems, Inc.

Summary: This contract allows for the operation of the central reservation system, software licensing, upgrades, maintenance, and support for the Tennessee state parks facilities.

Original maximum liability: \$2,500,000

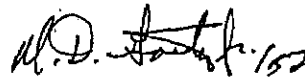
After reviewing the above-referenced contract request the Fiscal Review Committee voted to recommend approval of the contract by the Commissioner of Finance and Administration.

CC:LSC

cc: The Honorable Betsy L. Child, Commissioner, Department of
Environment and Conservation
Mr. Robert Barlow, Director of the Office of Contracts Review

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED



Commissioner of Finance & Administration

Date: 2-10-05

Each of the request items below indicates specific information that must be individually detailed or addressed as required.
A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT
CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #	327.12-023		
STATE AGENCY NAME :	Department of Environment and Conservation		
SERVICE CAPTION :	Hospitality Management System		
PROPOSED CONTRACTOR :	Megasys Hospitality Systems, Inc.		
CONTRACT START DATE : (if date is < 60 days after F&A receipt, attach required explanation)	8/1/2005		
LATEST POSSIBLE END DATE : (including ALL options to extend)	7/31/2010		
TOTAL MAXIMUM COST : (including ALL options to extend)	\$2,500,000.00		
APPROVAL CRITERIA : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service		
ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)			
(1) description of service to be acquired :			
<p>The proposed contractor will operate the central reservation system. The proposed contractor will also provide software licensing, upgrades, maintenance, and support for the Tennessee State Parks hospitality management system at the facilities. In addition, the contractor will implement state-requested software modifications and enhancements.</p> <p>Contingent upon favorable negotiations, the state may request that the contractor install and implement a complete and fully integrated golf course module that would allow us to book tee times, schedule tournaments, create and manage marketing promotions for frequent players, etc. A full marina module that would allow us to better manage the various boat slips and their ongoing rental and all the accounting that is associated with that operation would also be advantageous. (Currently, only merchandise sales and inventory modules are in use at golf courses and marinas.) Finally, implementation of the system at additional parks may be desirable.</p>			

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Office of Contracts Review

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(2) explanation of the need for or requirement placed on the procuring agency to acquire the service :

A performance audit issued by the Comptroller of the Treasury in August 1997 identified the need for a computerized system for managing reservations, charges, and related records, observing that a "manual system is time-consuming and more vulnerable to error than an automated system."

The Hospitality Management System is currently implemented at six state parks. The system is used at these 6 parks to manage operations for 6 inns and conference centers, 5 golf courses, 6 restaurants, 7 gift shops, 6 snack bars and 2 marinas. Also, it includes a Central Accounting Module that allows Fiscal Services to access consolidated financial information for all of these facilities in real time.

Operations for the last fiscal year alone included the processing of approximately 82,000 reservations for inn and cabin accommodations. These reservations are entered either by park staff, by the guest as an online reservation, or by Megasys Hospitality Systems staff at the Central Reservations service center that is provided as an additional service via the current contract. Also during the last fiscal year, over 530,000 point-of-sale transactions for the golf courses, gift shops, restaurants, snack bars, and marinas have been processed. In fact, over 144,000 credit card transactions, amounting to nearly \$10 million in credit card sales, were processed for the reservations and point of sale transactions at these 6 parks during the last fiscal year alone.

Tennessee is one of a few, if not the only, state that has such an integrated system in place, connecting multiple state parks and their various operations, in a standardized and fully integrated format that supports both the activities at the park level as well as the needs of central office staff. Based on the volume of transactions and the magnitude of dollars involved, this type of integrated system continues to be a necessity for the state park system.

(3) explanation of whether the service was ever bought by the procuring agency in the past, and if so, what method was used to acquire it :

The Department of Environment and Conservation issued RFP 327.12-002 during FY 2000 to procure the service and entered into a contract, effective August 1, 2000, for a five-year period that will end on July 31, 2005.

(4) name and address of the proposed contractor's principal owner(s) :
(not required if proposed contractor is a state education institution)

Patrick Curry
4770 S. Harvard
Suite 300
Tulsa, OK 74135

Ed Mascarin
4770 S. Harvard
Suite 300
Tulsa, OK 74135

(5) evidence that the proposed contractor has experience in providing the service and evidence of the length of time the contractor has provided service :

Megasys has satisfactorily met the state's contract requirements since August 2000 and has consistently demonstrated expertise in the development, implementation, and management of the hospitality management system. The department is extremely satisfied with the contractor's responsiveness and ability to interpret our business requirements. According to the company's website, the proposed contractor began providing hospitality management system services in December 1990.

(6) documentation of OIR endorsement of the Non-Competitive procurement request :
(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

(7) documentation of Department of Personnel endorsement of the Non-Competitive procurement request :
(required only if the subject service involves training for state employees)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

(8) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :

The system software and code are proprietary to the contractor and are not available from any other source. Consequently, the only alternative is the conversion to a new system, which would be cost prohibitive.

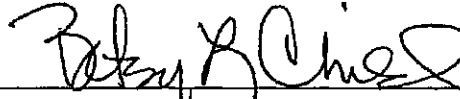
(9) justification of why the state should acquire the service through Non-Competitive Negotiation rather than through a competitive process :

(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

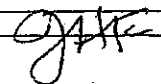
The state has made a significant investment in the existing system that would be lost by converting to a different system. Initial setup of the central reservation system and installation of the system in each of the resort parks was a substantial one-time cost (approximately \$1,000,000) in the original contract that would be incurred if a new system were developed, but not under the proposed contract. Approximately 350 state park and central office employees routinely use the system and would require training on any new system. State and contract personnel have expended considerable time and effort recording detailed information into the system about each park's facilities and amenities. This process and other customization would have to be converted, at substantial cost, in implementing a new system. Funds were previously appropriated for the implementation of the hospitality management system. It would not be the best use of state funds to unnecessarily incur the costs again at this time.

AGENCY HEAD REQUEST SIGNATURE:

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)





SIGNATURE DATE: 1





STATE OF TENNESSEE

FAX TRANSMITTAL

TO:	Bill Ezell, Chief Executive Officer Office for Information Resources	FAX # 741-4589
FROM:	Ray Register, Director of Contract Administration	FAX # 532-0197
DATE:	December 9, 2004	
RF3#	327.12-023	
RE:	OIR Procurement Endorsement Documentation for — HOSPITALITY MANAGMENT SYSTEM	
NUMBER OF FAX PAGES (INCLUDING COVER):		
<p>The proposed, service procurement documents referenced above are hereby forwarded to the Office for Information Resources (OIR) for review. The subject scope of services appears to include information systems services or information technology support activities.</p> <p>This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter to determine whether OIR is supportive. Please indicate OIR endorsement of the procurement described by signature below and return this communication at your earliest convenience (note the return FAX number above).</p> <p>If you have any questions or concerns about this matter, please call Ray Register at 532-0216.</p> <p>Thank you for your help.</p> <p>Attachment</p>		
OIR ENDORSES THE SUBJECT PROCUREMENT REQUEST		
 Office for Information Resources		 Date